



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2004

Mr. Joel K.B. Winful
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2004-3076

Dear Mr. Winful:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199562.

The Dallas County Constable Precinct #1 (the "county") received a request for the personnel file of a named individual. You state that the county has released some of the requested information to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in relevant part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

....

- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [and]

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

. . . .

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or (b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You state that the personnel file at issue contains several internal records that relate to an investigation of the named officer's actions in a specified incident, and you represent that these records relate to a criminal investigation because the officer was indicted on criminal charges. Further, you explain that the indictment charges did not result in conviction or deferred adjudication. We note, however, that the submitted information pertains to an administrative investigation, rather than a criminal investigation, and that the criminal case was investigated by the Dallas Police Department, resulting in charges brought by the Dallas County District Attorney's Office. Additionally, you do not assert that this investigation resulted in a criminal investigation into the alleged conduct. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (Gov't Code § 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of Gov't Code § 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). Therefore, the county may not withhold any of the submitted information under section 552.108 of the Government Code.

However, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the county must withhold the section 552.130 information we have marked. All remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 199562

Enc: Submitted documents

c: Ms. Holly Becka
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